

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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YOCELIN MORALES, individually and on behalf :
of others similarly situated, :

Plaintiff,

: **ORDER ADOPTING REPORT
AND RECOMMENDATION**

– against –

: 21-CV-1868 (AMD) (RER)

**LOS CAFETALES RESTAURANT CORP.,
D/B/A LOS CAFETALES BAKERY &
RESTAURANT, ISRAEL ARIZA BARRIOS,
AND CAROLINA BERMUDEZ,**

Defendants.

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ANN M. DONNELLY, United States District Judge:

On April 7, 2021, the plaintiff filed this action against Los Cafetales Restaurant Corp., Israel Ariza Barrios (“Barrios”), and Carolina Bermudez (“Bermudez”) seeking damages for violations of the Fair Labor Standards Act and New York Labor Law. (ECF No. 1.) On June 24, 2021, Barrios and Bermudez were served at their place of business. (ECF Nos. 9, 10.) The following day, Los Cafetales Restaurant Corp. was served via the New York Secretary of State. (ECF No. 8.)

On June 24, 2022, the plaintiff moved for default judgment. (ECF No. 20.) I referred the motion to the Honorable Ramon Reyes, who issued a report and recommendation on January 3, 2023, recommending that the Court deny the plaintiff’s motion without prejudice and with leave to amend for failing to adhere to local civil rules and the Servicemembers Civil Relief Act (“SCRA”). (ECF No. 21.) Specifically, the plaintiff did not submit a memorandum of law, as required by Local Civil Rule 7.1, or mail (or otherwise deliver) the default judgment papers to the defendants. (*Id.* at 7-9.) Judge Reyes also determined that the plaintiff’s “cursory investigation” into whether Barrios or Bermudez were in active military service did not

demonstrate compliance with the SCRA. (*Id.* at 9-10.) In addition, Judge Reyes identified inconsistencies in the plaintiff's pleadings and defects in the plaintiff's request for attorney's fees. (*Id.* at 11-13.) No party has filed an objection to the report and recommendation and the time for doing so has passed.

A district court reviewing a report and recommendation "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). To accept a report and recommendation to which no timely objection has been made, "a district court need only satisfy itself that there is no clear error on the face of the record." *VOX Amplification Ltd. v. Meussdorffer*, 50 F. Supp. 3d 355, 369 (E.D.N.Y. 2014).

I have carefully reviewed Magistrate Judge Reyes's well-reasoned report and recommendation for clear error and find none. Accordingly, I adopt the report and recommendation in its entirety. The plaintiff's motion for default judgment is DENIED without prejudice and with leave to amend and renew within 30 days of this order.

SO ORDERED.

/s/ Ann Donnelly

ANN M. DONNELLY
United States District Judge

Dated: Brooklyn, New York
January 24, 2023